
REPORT 5

**SUBMISSION ON THE BUILDING (EARTHQUAKE PRONE BUILDINGS)
AMENDMENT BILL**

1. Purpose of report

This report provides a draft Wellington City Council submission on the Building (Earthquake –Prone Buildings) Amendment Bill, for the Committee’s approval. The draft submission is attached in Appendix 1.

2. Executive summary

The Government recently introduced the Building (Earthquake –Prone Buildings) Amendment Bill (the Bill) and referred this to the Local Government and Environment Select Committee for its consideration.

The Select Committee has called for submissions by April 17th.

The Bill introduces a number of significant changes to the Building Act (the Act) relating to the regulation of building standards for the seismic strength of buildings. These changes were informed by the recommendations of the Royal Commission on the Christchurch earthquakes.

The Council previously made a submission on the development of this Bill to the Ministry of Business, Innovation and Employment (MBIE) in March 2013. The Bill has been drafted consistently with the earlier consultation documents from MBIE and officer’s views remain similar to those provided in the March submission.

The Council has a number of concerns about some of the provisions of Bill and these are highlighted in the attached submission to the Select Committee.

3. Recommendations

Officers recommend that the Committee:

1. *Receive the information.*
2. *Agree to the attached submission to the Local Government and Environment Select Committee.*
3. *Agree to delegate to the Chief Executive and the Buildings Portfolio Leader, the authority to amend the proposed submission from Wellington City Council to the Local Government and Environment Select Committee to include any amendments agreed by the Committee and any associated minor consequential edits*

4. Background

The amendments in the Bill include;

- Requiring Council's to undertake a seismic capacity assessment of existing non-residential buildings, and multi-storey and multi-unit residential buildings in their districts within five years.
- Providing for a register of information on the seismic capacity of buildings to be held by MBIE.
- Clarifying the current 33% new build standard (NBS) threshold for defining an earthquake-prone building, including that it applies to parts of buildings as well as whole buildings.
- Requiring work on existing earthquake-prone buildings to be undertaken within a single national time frame. The timeframe will be within 20 years of the legislation taking effect (i.e. assessment by territorial authorities within 5 years and work completed within 15 years of assessment).
- Providing for work on priority buildings (a definition of priority buildings will be provided for in regulations) to be prioritised and have shorter timeframes. The Council will be able to define the strengthening timeframes for these buildings.
- Exempting certain buildings (also to be defined in regulations eg low use rural buildings) from the requirements to undertake strengthening work.
- Enabling owners of buildings that are Category 1 historic places under the Historic Places Act 1993 to apply to the relevant territorial authority for an extension of up to 10 years to complete the work.
- Enabling Councils (that are building consent authorities) to issue building consents for required work on buildings that are earthquake prone without requiring other upgrades (i.e. for access and facilities for people with disabilities and for means of escape from fire).

5. Discussion

This section highlights some key concerns that officers have with the provisions of the Bill. More detailed commentary is provided in the attached draft submission.

The Council has a strong track record in this area. It has been proactive in both assessing buildings and assisting owners to address seismic strengthening issues. The current programme of assessing the buildings built prior to 1976 is almost complete and initiatives are included in the Draft Annual Plan to assist owners making strengthening decisions.

Timeframes and Seismic Strength

- The Council supports the overall timeframes of five years for assessment and 15 years to strengthen earthquake prone buildings and is confident that we can reach these targets. However the timeframes will be challenging for those councils with limited resources, a large assessment task or those that haven't started the task of assessment.

- Some building owners will struggle to meet these timeframes, may not have the financial capacity to complete the work within the 15 year timeframe. In some cases in regional centres the strengthening costs will outstrip the value of the building.
- The blanket level of 33% NBS sets expectations that this is sufficient. The Council's current policy states that Council "will encourage, but cannot require, strengthening to higher levels, particularly for buildings serving a specific post disaster function". City resilience is a key concern beyond life safety, which has not been taken into account in setting the level at 33%.
- The Council supports the public availability of consistent building information on a national basis so that there is a good understanding of the quality of NZ's building stock. However, it may be more realistic for the proposed register of the seismic capacity of buildings to be a register of only earthquake prone buildings given the significant volume of records to be maintained and the range of issues that will need to be addressed to ensure that this information is accurate and appropriately addresses privacy and security concerns.

Priority Buildings and Heritage

- The Council supports the proposal to have the option for faster strengthening timeframes for priority buildings. This is consistent with our existing policy where high priority buildings with post disaster functions have a 10 year period to be strengthened.
- The Council supports Category 1 heritage building owner's ability to apply for an extension due to the cost and complexity in strengthening some of these buildings. This raises a question about local autonomy and a local community ability to decide which buildings they might like to give more time to strengthen as the Bill only applies to Historic Places Trust Category 1 buildings. Wellington does not differentiate between the Historic Places Trust Category 1 buildings and other heritage buildings in our District Plan and there are a number of other significant buildings (including Category 2 buildings) that would not be covered by the provisions in the Bill.
- There is an overlap in these provisions with heritage buildings (eligible for an extension) that are priority buildings (that can have a shorter timeframe imposed on them) that will need to be clarified.

Decoupling Fire Safety and Accessibility provisions

- In the Council's previous submission we noted that in some cases projects can trigger wider provisions of the Act, such as fire safety and accessibility requirements. At times, this can be a barrier to earthquake strengthening. However the Council continues to disagree with the proposal to separate these provisions. We propose that the existing discretion of Council officers remain in place.

Processing Timeframes

- The Council does not support the establishment of an imposed timeframe (20 working days) for regulatory staff to process seismic performance reports. The

timeframe of working with owners to clarify seismic reports can often take longer than this because of the availability of engineering resource.

Placarding Requirements

- The Council supports the requirement to place placards on any buildings deemed earthquake-prone under Section 133AN of the Act. It is important to ensure that the public are aware of which buildings are earthquake prone to allow them to make their own decision about entry. It is acknowledged that this can have implications for the building owner.

Transition Provisions

- The Bill needs to ensure that the transition provisions are very clear in relation to any existing notices already issued under section 124 of the Act and that no risk of dispute or legal liability will rest with Councils that have issued notices already.
- The legislation must also be very clear that Councils will not have to reassess buildings or bear legal liability if the assessment process defined under Section 133AG of the Act differs from the existing agreed processes.

Wider issues for central Government to consider

The successful implementation of the provisions in the Bill is reliant on a number of wider issues also being considered. There needs to be an increased focus on information and financial initiatives that assist building owners to strengthen buildings rather than merely informing them of their current status. The largest issue that owners will face is how to resolve strengthening issues, particularly if they own a heritage building.

6. Conclusion

The attached draft submission sets out the Council's issues describer in this paper for submission to the Local Government and Environment Select Committee.

There is a lot of detail still to come in the regulations that will be attached to this Bill. We expect that the Government will similarly consult on these given the public interest in these issues and the Council will need to be prepared to provide its view as this legislation progresses.

Contact Officers: *Neville Brown, Manager Building Resilience; Geoff Lawson, Principal Advisor Policy*

APPENDIX 1

Secretariat
Local Government and Environment Committee
Select Committee Services
Parliament Buildings
WELLINGTON 6160

Wellington City Council's Submission on the Building (Earthquake Prone Buildings) Amendment Bill

Thank you for the opportunity to make a submission on this Bill.

We previously submitted to the Ministry of Business Innovation and Employment (MBIE) on the development of this legislation and the Council's position remains unchanged. The relevant sections of our submission to MBIE are attached. Overall we believe that the Bill provides a reasonable approach to making New Zealand's building stock more resilient however we have some concerns about some of the provisions.

The overall aim must be to set a realistic national standard that can be achieved to ensure that the risk to life and the community are minimised in the event of an earthquake. The Bill must enable building owners and local authorities to make realistic and robust decisions on whether buildings should be strengthened or replaced.

While we consider that the Bill achieves this, we also believe that the successful implementation of the Bill will be reliant on the Government considering the wider implications of the Bill and assisting building owners and Councils in implementing its provisions. If it only works for those who can afford to strengthen buildings, this may give rise to a range of other issues.

The Council has a strong track record in this area. As a Council we have been proactive in assisting building owners and have included initiatives in our Draft Annual Plan to reduce the rates and consent costs impact on strengthening buildings. We have also increased the value of grants available to assist owners of heritage buildings strengthen their buildings. We have seen a steady uptake of these grants as buildings are assessed and plans are approved for strengthening works. The current programme of assessing the buildings built prior to 1976 is almost complete and initiatives are included in the Draft Annual Plan to assist owners making strengthening decisions.

We consider that there is a significant role for central government in this area to ensure that the strengthening of buildings is facilitated and not just regulated.

Timeframes – Section 133 AF and Section 133 AO

- Wellington City Council supports the overall timeframes of five years for assessment and 15 years to strengthen earthquake prone buildings. As stated previously we think that these timeframes are realistic and we consider that we can commit to deliver on the required outcomes.
- However the timeframes will be challenging for those councils with limited resources, a large assessment task or those that haven't as yet started the task of assessment. There will be funding implications to ratepayers and there will be pressure on engineering resources to meet this demand. We would recommend areas of low seismic risk (Auckland, Hamilton, Far North) be given 10 years to complete the assessment.
- Some building owners will struggle to meet these timeframes, may not have the financial capacity to complete work within the 15 year timeframe and in some cases in regional

centres the strengthening costs will outstrip the value of the building. It is more difficult for multiunit residential buildings, buildings with heritage status. Some owners may therefore leave the market or the buildings may be demolished with the loss of economic and heritage value.

- In our earlier submission to MBIE we recommended that buildings located on strategic routes, of non-ductile column construction, high density high rise buildings that could impact on neighbouring properties if not strengthened adequately; and those that have particular hazardous elements could also be prioritised for assessment.

33% NBS standard – Section 133AB

- We remain concerned that the blanket level of 33% New Build Standard (NBS) sets expectations that this is sufficient. The Bill does not allow local communities to agree to set higher standards for any classes of buildings. Our current policy states that Council “will encourage, but cannot require, strengthening to higher levels, particularly for buildings serving a specific post disaster function”. City resilience is a key concern beyond life safety, which has not been taken into account in setting the level at 33% NBS. At this level, people may survive but the building may not.
- For heritage buildings strengthening to 33% NBS will not necessarily preserve the heritage values of a building. We also support the strengthening of high risk features to a higher level than 33%. Experience of the Gisborne & Christchurch earthquakes has shown these high risk elements can fail even in moderate quakes and despite the 33% life safety requirement for the building. We recommend that the Bill addresses these concerns and enables Councils to set higher standards for some buildings in consultation with their communities.
- However, we are seeing that the market is demanding strengthening to higher than 33% NBS with tenants demanding much higher levels than 33% in higher grade office stock.
- The Bill needs to take into account the level of seismic risk that applies to various regions. Wellington acknowledges the level of seismic risk for its catchment warrants a minimum of 33% NBS. However for regions with very low levels of seismic risk this may be inappropriate.

A National Building Database – Section 273 (1) (aab), Section 275A, Section 275B

- We continue to support the public availability of consistent building information on a national basis so that there is a good understanding of the quality of New Zealand’s building stock.
- However we would want assurance that the costs of a national database do not exceed the amount the Council currently spends on delivering this data online. If the information is not accurate and current, this will limit the value of the register, while imposing a regulatory burden on councils and building owners.
- We believe that it is more realistic for this database to record earthquake prone buildings only given the significant volume of records that would otherwise need to be maintained. We believe that ultimately this database should be linked with the National Online Consenting Database.

Heritage and Priority Buildings – Section 133AZ, 133AZA, 133AZB; Section 133AT

- The Council supports the option to have faster strengthening timeframes for priority buildings. This is consistent with our existing policy where high priority buildings with post disaster functions have a 10 year period to be strengthened.

- We agree that owners of Category 1 heritage buildings should be able to apply for a timeframe extension due to the cost and complexity in strengthening some of these buildings.
- This raises a question about local autonomy and a local community ability to decide which buildings they might like to give more time to strengthen as the Bill only applies to Historic Places Trust Category 1 buildings. Wellington does not differentiate between the Historic Places Trust Category 1 buildings and other heritage buildings in our District Plan and there are a number of other significant buildings (including Category 2 buildings) that would not be covered by the provisions in the Bill.
- It is also unclear how these provisions will work when Category 1 heritage buildings are also priority buildings. The provisions of this Bill overlap in some cases. For example, the Wellington Railway Station or Town Hall. The building owners can have shorter timeframes imposed by a Council but also apply for an extension. Is it expected that this would be addressed in a local framework for priority buildings that would be developed by councils in consultation with their communities.
- As a general principle, the Council does not support proposals to strengthen or demolish taking precedence over all other legal, regulatory and planning requirements, such as those designed to protect buildings of heritage or local character.

Decoupling Fire Safety and Access provisions – Section 133 AX

- As stated in our previous submission in some cases projects can trigger the wider provisions of the Act, such as fire safety and accessibility. At times, this can be a barrier to earthquake strengthening.
- However the Council continues to disagree with the proposal to separate these provisions. We propose that the existing discretion of Council officers remain in place.
- Any initiative to allow Section 112 of the Act to be suspended for earthquake strengthening will require very clear guidance to ensure that this is used appropriately and cannot be used to avoid required building improvements and obligations to resolve accessibility or fire safety.
- The Bill requires the consenting authority to make a judgement between the benefits of earthquake strengthening against any detriment of not addressing the as nearly as practicable provisions of the building code that relate to fire safety and access. We consider that the existing provisions in the Act provide sufficient discretion for Councils.
- This Bill is expected to result in a large number of building projects. There is an ageing population where access will only become a greater issue with time. It would seem that where possible these issues should be addressed rather than deferred. As a Council, we have committed to an Accessibility Action Plan and consider that this is an important issue for Wellington to continue to address.
- We would want assurance that the Government has advice on whether this provision is compliant with the Human Rights Act and other similar obligations.

Exemptions of certain buildings – Section 133AS

- We support the ability of some low use buildings to be able to apply for an exemption to these provisions.
- The criteria could include low risk building construction types as well as low usage and recognise that the strengthening criteria will be onerous for many community based groups which have irregular use of their facilities and lesser ability to finance the upgrade.

- It will need to consider Health and Safety requirements, the varied types of users of these buildings and the frequency of use not just maximum numbers. The risk is different and the provisions need to recognise this. If exemption notices are issued, it needs to be clear that the owner accepts the risk and any liability associated with use of the property.

Processing Timeframes – Section 133AM

- We do not support the establishment of an imposed timeframe (20 working days) for regulatory staff to process seismic performance reports. The timeframe of working with owners to clarify seismic reports can often take longer than this because of the availability of engineering resource.

Placarding Requirements – Section 133AN

- We support the requirement to place placards on any buildings deemed earthquake prone under Section 133AN. It is important to ensure that the public are aware of which buildings are earthquake prone to allow them to make their own decision about entry. It is acknowledged that this can have implications for the building owner.

Transition provisions – Schedule 1AA; Section 133AG and 133AH

- We understand that the intent of the legislation is that new notices be issued that will revoke existing notices that have a longer timeframe than 15 years to complete the strengthening work. The Bill needs to ensure that the provisions are very clear in relation to any existing notices already issued under Section 124 of the Act and that there will be no risk of dispute or legal liability for Councils. Our advice is that existing notices are irrevocable and a significant legal risk would result if the Council attempted to amend any notices, or to cancel and reissue new notices without explicit legislative support.
- The legislation must also be very clear that the Council does not have to reassess buildings or bear legal liability if the assessment process defined under Section 133AG differs from the existing agreed processes.

Wider issues for Central Government to consider

The successful implementation of the provisions in the Bill is reliant on a number of wider issues.

The Bill by itself will not fully address the earthquake resilience of buildings in New Zealand. The following factors were included in our previous submission and we would recommend that the Select Committee consider these factors in their advice to Parliament.

- We would like to see an increased focus on **information initiatives** that assist building owners to strengthen buildings rather than merely informing them of their current status. The largest issue that owners will face is how to resolve the strengthening issues, particularly if they own a heritage building.
- We consider that the relationship between **the Building Act and the Resource Management Act** 1991 (RMA) needs to be reviewed. These two Acts need to work together and a balance needs to be found between the wider provisions of the RMA and the life safety provisions of the Building Act. In particular, the relationship between these two pieces of legislation is key for the management of earthquake prone heritage buildings where the most sensible outcome is that the building is either demolished or significantly modified through earthquake strengthening methods.
- There needs to be a **proactive financial environment** for owners to take action, either as incentives or the removal of financial barriers. Our view remains that there is public benefit from ensuring New Zealand can quickly recover from an earthquake and Central

government, on behalf of the public, should be prepared to invest to ensure that the country has the capacity to withstand such events. This could include;

- **Tax deductibility of earthquake strengthening** with strengthening work to be completed within a set timeframe; for instance;
 - a greater tax benefit could be weighted to strengthening to above 70% NBS which provides economic resilience;
 - a tax rebate or other financial incentive could be provided for seismic strengthening work on residential (private owner occupier) property classes.
- Financial products that bridge gaps in the banking **sector's risk and security requirements** to allow better access to finance for property owners, particularly focussing on the period while buildings are being strengthened.
- We are concerned about the financing options available for **unit title buildings and residential apartment buildings**. There are particular issues with this sector's ability to respond to changes in the regulatory environment. They face more restrictions on borrowing to finance strengthening projects and difficulties within the insurance environment. They are residential owners rather than businesses so do not have the same options available to them and the value of each unit titled apartment is much lower when providing security against any finance option for strengthening. This issue continues to be raised with the Council by Inner City Resident groups. We think there is an option for Government to provide a short-term guarantee on behalf these owners to enable them to obtain access to borrowings for the purposes of strengthening. We see this as a short-term minimal risk solution which could easily offset by the valuation uplift in building value from the strengthening.

In conclusion, while we consider that this Bill provides a realistic and acceptable standard, taking a national standards approach will remove much of the local engagement on the issue. Community consultation does have a place in ensuring that a community has a clear understanding of the values of their area, both economically and also culturally through heritage buildings. This enables the community as a whole to make an informed decision about their priorities for earthquake strengthening. Taking a community approach could have enabled communities to set policies that would move beyond this baseline and consider the wider issues of economic resilience. We recommend that legislation should allow Councils the flexibility to create local policies with their communities.

The proposed Bill is aimed at a setting a life-safety benchmark and does not focus greatly on the resilience of local economies and the speed of recovery post an event.

We need to recognise that the significant cost of strengthening buildings may divert capital which might otherwise be invested in New Zealand's business sector and we need to create a financial environment which supports these businesses to do both – by encouraging businesses to strengthen their buildings while also continuing to reinvest in their business to help provide long term growth in the economy.

In many cases strengthening buildings will only restore building values to the values before the Christchurch earthquakes and the increased awareness of earthquake strengthening.

We would welcome the opportunity to present our submission orally.

Celia Wade-Brown
MAYOR
Wellington City Council

Relevant Sections of the March 2013 Submission to the Ministry of Business Innovation and Employment on Building Seismic Performance

Compulsory seismic capacity assessment of buildings

1. Should local authorities be required to assess the seismic capacity of all buildings covered by the earthquake-prone building system in their areas and to issue seismic capacity ratings to owners?

We support this proposal. As a starting point, to mitigate the risk of social and economic loss from a moderate or major earthquake, a complete assessment of the seismic capacity of the current building stock¹ must be completed. Given the failure of a number of “modern’ buildings during the Canterbury earthquakes, it is important to understand the existing structural performance of all buildings, not just older unreinforced masonry buildings.

What is not clear in the consultation document is who pays the cost for delivering this assessment process. In the event of a major earthquake, the cost is borne by both the local and national economy. The factors that support a nationally funded approach are that the location of disasters is not predictable and the cost of remediation is born nationally. The impact of Christchurch is now reflected nationally in increased building costs and insurance premiums. The mitigation of this should also be borne nationally to ensure that the assessment process is completed and the risk of future costs is mitigated.

A particular issue to be considered will be whether there is sufficient engineering resource to achieve this timeframe nationally.

2. Do you think five years is a reasonable and practical time to require local authorities to carry out assessments in their districts?

This proposal is supported. In most cases five years is a reasonable time to require local authorities to carry out seismic assessments in their districts. For Wellington, the Council is well advanced in these assessments, so will be able to complete this within this timeframe. However, Auckland Council will have the largest issue with the scale of the assessment project and smaller councils may not have the resources to dedicate to the assessment process. Whether or not five years is reasonable in all cases, will need to be considered at a council level.

For those councils with less capacity or experience there is a lot of expertise and resources within local authorities already that can be shared. This may make the five year time frame achievable; however it will require coordination and leadership across councils and there is a concern the country will not have sufficient technical capacity to undertake this work. We would recommend areas of low seismic risk (Auckland, Hamilton, Far North) be given 10 years to complete the assessment.

We understand that there is a proposal for a desktop assessment tool to be developed to undertake this initial assessment that aims to aid the process. However the assessment process

¹ Buildings covered by the earthquake provisions of the Building Act 2004.

must be consistent with existing processes and not require the buildings that have been assessed to be reassessed.

3. Should unreinforced masonry buildings be assessed faster than other buildings?

In the scale of risk, this is a priority. However, the level of detail held by councils on buildings will not necessarily identify whether or not a building is of unreinforced masonry (URM) construction. As a proxy, the age of building can be used to identify buildings more likely to be of this construction type. We recommend that buildings constructed pre 1935 fall within this category as there was no national standard prior to 1935 and anecdotally these can be considered earthquake prone.

This requirement should apply nationally, including low seismic risk areas and we would recommend that this should have a shorter timeframe with a maximum of 2 years from the date of the legislation is enacted in high seismic risk areas, and within 4 years in other areas. (Auckland, Hamilton, Far North).

Alongside this there are a number of other building types that would also have a high priority for assessment. This might include buildings;

- Located on strategic routes - for urban areas such as Wellington, access must be maintained in the event of a moderate or stronger earthquake and buildings along these routes need to be of sufficient standard to mitigate this risk;
- Of non-ductile column construction - any other high risk construction types must also be identified and prioritised for assessment;
- That are high density high rise buildings that could impact on neighbouring properties if not strengthened adequately; and
- That have particular hazardous elements - this includes items that represent falling hazards like chimneys, veneers, gables, parapets, cornices, canopies and ornamentation, water tanks, tower like appendages, fire escapes, lift wells, facades, plaster and other heavy renders.

Public register

4. Do you agree that local authorities should be required to enter information on the seismic capacity of buildings into a publicly accessible central register to be managed by MBIE?

It is our understanding that the purpose of this register is to increase the quality and availability of building information across the country.

It is assumed that the purpose of placing this information in a public register is to ensure that people are fully informed about the risk and/or seismic status of any building. We support MBIE managing such a register; however, the quality of the data is a major issue.

The advantage of this proposal is that it becomes a legislative requirement to display agreed building data on this public register.

The questions that need to be addressed are;

- Will this information “inform” the public? Would those people who suffered injury or death in Christchurch have made different decisions if this register was available? Do people need to be informed about the status of buildings in areas where they don’t live or visit?
- Will a public register change building owner behaviour? Tenants are demanding a higher level of information and may seek professional advice rather than rely on a public register.
- The risk of a national register is that it is reliant on the quality of the data entered into the system. To standardise this may require only closely defined information to be entered e.g. address, building name, number of floors, date of construction, type of construction.

If the information is not accurate and current, this will limit the value of the register, while imposing a regulatory burden on councils and building owners.

5. Should information other than the building’s seismic capacity rating be entered into the register – for example, agreed strengthening actions or information from an agreed building ratings system?

We support the proposal if it improves national building information but submit that this register should start simply in the first instance. Additional detail can be added at a later time. Adding supplementary information onto the register could be beneficial as it may help to identify trends as buildings are being assessed and strengthened. However, the concerns (from question 5) remain as to whether this information informs the public.

There will be a cost to maintain the database. The agreed actions may change and the effort to keep both internal systems and national systems up to date and accurate may well exceed the desired benefit. This information would have to be maintained accurately as it would be accessible for commercial parties such as insurers, banks, neighbouring property owners, tenants and prospective tenants or purchasers. This information may then be taken into account when assessing insurance risk or finance security risk. This may be an unintended consequence of providing additional information on the register.

The Council also recommends that MBIE develops with local authorities a comprehensive assessment of heritage buildings and a plan of action to be used in the event of an emergency. Having this available in the event of an emergency will enable informed decisions to be made on retention or demolition of any building. This can then be done irrespective of the experience in heritage management of the personnel involved.

6. Rather than a central register, should local authorities be responsible for both collecting and publishing this information?

A central register is preferred so that all councils provide consistent data. Given a council's access to local information, it is logical for them to be responsible for collecting the information and passing it onto MBIE. While we support the concept of council's making information available to the public, for consistency the register needs to be managed by MBIE.

7. Should there be any other information disclosure requirements – for example, should building owners be legally required to display information on the building itself about the building's seismic capacity?

We support, in principle, an owner having to display information. However MBIE will need to develop and provide a comprehensive public education programme to support this.

There are a number of implementation issues that would need to be considered:

- If this information was displayed who would police it for accuracy?
- How often would this information need to be updated?
- Who would pay for the compliance costs of ensuring that the information is displayed correctly?

This Council's observation is that it is very difficult to ensure section 124 notices remain displayed on a building. We see no difference in this case particularly if this information is not favourable for the building. The minimum could be to display the IEP assessment if this is <34% of NBS as this is the public safety threshold. The section 124 notices already provide the public with information on earthquake risk, so unless there is additional information to display, we feel the s124 notices are sufficient for communicating earthquake prone building risk.

8. What costs and other implications do you see resulting from the proposal to put seismic capacity information in a register?

As noted above, we must consider who will have interest in such a register, whether the information can be maintained with sufficient accuracy to achieve the outcomes sought, and whether the cost of maintaining the information justifies this. For this database to be effective, the data will need to be accurate and current. It will need to be refreshed on an ongoing basis. This will impose a cost on the Council. We see this as being new work and we believe the existing level of phone/email enquiries will not diminish. We believe enquirers will want to assure themselves that the data they need is absolutely current.

The purpose of such a register needs to be very clear.

A mandatory national requirement

9. Does the current earthquake-prone building threshold (33 per cent of the requirement for new buildings) strike a reasonable balance between protecting people from harm and the costs of upgrading or removing the estimated 15-25,000 buildings likely to be below this line?

Yes we consider that this provides the right balance. There is evidence from the Canterbury quakes to show that many buildings above 33% performed relatively well. On this basis, 33% should be considered reasonable. This needs to continue to be monitored and adjusted for any future changes to the structural standard.

However, we consider that, as proposed by the Royal Commission, there needs to be some ability for councils, in consultation with their communities, to require higher standards in some instances.

This could be achieved through the local earthquake prone building policy by ensuring these policies are enforceable.

10. Should the requirement for earthquake-prone buildings to be strengthened or demolished take precedence over all other legal, regulatory and planning requirements, such as those designed to protect buildings of heritage or local character?

The Council does not support this proposal for proposals to strengthen or demolish taking precedence over all other legal, regulatory and planning requirements, such as those designed to protect buildings of heritage or local character.

It is unclear from the question at what point the removal of any other legislative requirement would occur – at IEP stage, once the section 124 notice has been issued, once it has expired, some other point in time? This has quite a bearing on the community's tolerance around what efforts have been made to strengthen an EQP building that is of public interest, such as a heritage building.

There will need to be a legislative check and balance to ensure that building owners aren't allowed to undertake wholesale alteration or destruction of heritage buildings. While the Council supports strengthening and has a long history of seeking to protect heritage buildings, it does want to be able to give city resilience objectives equal, if not more, weight in some circumstances. This should be the case if not strengthening a building also puts other city resilience outcomes at risk (i.e. a high priority heritage building might be strengthened regardless).

It is appropriate that a resource consent process (with allowance within District Plans to enable these trade-offs to be considered) decides on this balance. This also means that where consent is sought by an applicant for demolition, full consideration can be given to what replaces the building. In Wellington, the provisions of the District Plan focus not only on the building itself, but in the event of it being demolished what might replace it as empty spaces can also impact on a city's vitality and economic performance. This may not be the case for all councils. A key principle is to ensure that local authorities have the autonomy to manage the Building Act/RMA processes themselves under the overall strategic policy settings set by central government.

In relation to listed heritage buildings that reach the end of the Building Act process and require Council to obtain a court order to strengthen or demolish (section 126), it would be more

appropriate to set up a joint hearing approach or similar mechanism to make these decisions, rather than forgoing the RMA process altogether. There will often be subtleties about each situation that require careful consideration, rather than a blanket approach that more often than not may result in demolition. However, any process has to have judicial powers that bind the parties to any decisions. This might avoid building owners running their buildings down to a stage where they know demolition will be the inevitable result. A key element in this is the ability for Councils to negotiate with building owners and resolve a Building Act/RMA dispute within the 10 year time period and before buildings reach this stage.

From a wider public policy view point, care needs to be taken on what assumptions are made about some heritage buildings that have a high public profile. In situations where strengthening may have the result of adversely affecting the heritage values of a building, there could well be community tolerance for this outcome as opposed to losing the building altogether. In some cases, visible earthquake strengthening methods can become part of the story of the building, its context and Wellington as a resilient city.

11. Should local authorities have the power to require higher levels of strengthening than the earthquake-prone building threshold, or strengthening within shorter timeframes than the legally defined period?

In some cases consumer demand and market forces are driving higher strengthening standards.

We believe that this is a reasonable requirement with provision that the community also agrees or supports this is a public safety and city resilience issue. The situations where a Council might require higher standards or shorter timeframes include:

- Buildings located on lifelines or strategic routes identified as critical in an emergency;
- Buildings with important public, social, economic or post-earthquake recovery functions. The CBD area in Wellington is vital to the regional economic performance and could be considered for a higher level of strengthening;
- When providing public funding is linked to incentivising an owner to undertake strengthening; and
- For heritage buildings. Strengthening to 33% will not necessarily preserve the heritage values of a building in the event of a moderate earthquake.

A local authority (and the community it represents) should have the ability to prioritise which buildings it wishes to have strengthened to a higher standard and have the mandate to work with building owners to achieve this.

12. Should certain features of unreinforced masonry buildings, such as chimneys and parapets, be required to be strengthened to a higher level?

We support the strengthening of high risk features to a higher level than 33%. Experience of the Gisborne & Christchurch earthquakes has shown these high risk elements can fail even in moderate quakes and despite the 33% life safety requirement for the building.

High risk features on buildings are items that represent falling hazards like chimneys, veneers, gables, parapets, cornices, canopies and ornamentation, water tanks, tower like appendages, fire escapes, lift wells, facades, plaster and other heavy renders. These are not restricted to older buildings with newer construction also contributing high risk features in their construction.

Buildings with such features exist on both vehicle and pedestrian routes around the central city area, and on a number of buildings in the suburban centres. There are also a large number of chimneys on residential dwellings and there is a particular issue with street verandahs on commercial buildings that represent potential hazards. Street verandahs are often required on buildings as part of a building consent and may need either strengthening or removal to protect the public. While they are attached to the building, they are over public land and may not be well maintained.

Currently in Wellington, building owners can undertake some strengthening or replacement of high risk features on heritage buildings that constitute 'Repairs and Maintenance' without the need for resource consent. However, external works to buildings apart from this requires a restricted discretionary activity resource consent. For residential buildings within pre-1930s areas, a resource consent (restricted discretionary activity) is required to remove a chimney if it is located on a primary elevation.

Councils will need to review their planning documents to also reduce the obstacles to building owners taking action to improve the safety of their buildings. This could include:

- Refining the definition of 'Repair and Maintenance' to be clear what can be permitted in relation to making buildings with high risk features safe;
- Providing specific provisions within the Heritage rules to enable building owners to strengthen or replace high risk features without the need for resource consent; and/or
- Changing any pre-1930s provisions to allow demolition of chimneys without the need for resource consent.

The Council is seeking technical/engineering advice on the options for replacement of some dangerous elements with acceptable alternatives, such as replica features made from safer materials, including the use of new technologies. The proposed central government education and advice services should take this into account.

The desired outcome is to have both a regulatory and advocacy response so that there are appropriate strengthening standards for these features, building owners are informed about the options for making high risk features safe, and the planning documents facilitate an outcome that balances heritage values with public safety.

13. Should local authorities be able to require faster action on buildings of strategic importance, such as those:

- Located on transport routes identified as critical in an emergency
- With important public, social and economic functions, such as schools and police stations
- With post-earthquake recovery functions, such as civil defence centres and hospitals?

We believe that this is a reasonable requirement with provision that the community also agrees or supports this is a public safety and city resilience issue. This would be built into a Local Earthquake Prone Building and Resilience Policy following consultation. However guidance from MBIE is required to ensure it is applied consistently by councils.

14. Should all unreinforced masonry buildings require strengthening more quickly than other earthquake-prone buildings?

Yes, given the higher risk to people and other property, it is reasonable to expect URM (constructed pre 1935) buildings to be strengthened or demolished more quickly than other types of construction. Given the effects of the critical structural weaknesses on some other buildings, (CTV and Pyne Gould) buildings with similar critical structural weaknesses should also be considered.

Exemptions and time extensions

15. Should the owners of certain specified types of earthquake-prone buildings be able to apply to local authorities for exemptions or time extensions to the requirement to strengthen or demolish?

The Council supports this proposal which would allow for buildings with low public safety risk to be exempted from the strengthening provisions. We consider that any exemption should have a time limit at that time it can be renewed so that if circumstances or building use changes then the exemption can be removed. To ensure that this process is applied consistently, there may be a requirement for an MBIE audit or review, where exemptions are granted.

The current Building Act requires a council to advise MBIE if the council issues a modification or waiver of the building code. Issuing an exemption or time extension to strengthen or demolish could be processed in a similar way.

If the exemption requires site visits then there should be an appropriate charge to cover the costs of inspection.

16. If yes, what are your views on the following possible criteria:

- The building is used only by the owner, or by persons directly employed by the owner, on an occasional or infrequent basis
- The building is used only occasionally (less than eight hours per week) and by less than 50 people at any one time

AND in each circumstance above

- All users are notified that the building is likely to collapse in a moderate earthquake
- The building is not a dwelling
- The building is not a school or hospital and does not have a post-disaster recovery function
- There is no risk of the building partially or fully collapsing onto a public walkway, transport route or a neighbouring building or public amenity
- Effective mitigation measures have been put in place to protect building users from the risk of collapse in a moderate earthquake?

The council would support these criteria although these criteria could include the building construction type given that a timber framed light roofed building is a lower risk than a brick veneer or masonry building with a heavy roof.

The strengthening criteria will be onerous for many community based groups which have irregular use of their facilities and lesser ability to finance the upgrade. However, clarity is required for the last bullet point, which may be at odds with the requirements for Health and Safety. Also, the definition of owner and employees may be inconsistent with the types of users of many of these buildings.

The issue will be whether a maximum of 50 people at any one time is set too low. Many small community groups may occasionally exceed a 50 person limit and trigger the strengthening

provisions. Is this risk sufficient to trigger earthquake strengthening requirements compared to a commercial building that is occupied 10- 12 hours a day, five days a week?

The trade-off here is hours utilised and number of people using the building at any one time. However, there is also a need to prevent unscrupulous owners coercing or forcing staff or tenants into continuing to use a building. This may be addressed by a building user having to sign a declaration confirming they are aware of the situation and also noting any mitigation measures.

The proposal needs to address who certifies and polices this level of use. If exemption notices are issued, it needs to be clear that the owner accepts the risk and any liability associated with use of the property.

Strengthening and other Building Act upgrade requirements

21. Are current requirements to upgrade buildings to “as nearly as reasonably practicable” to Building Code fire and disabled access requirements a disincentive or barrier to owners planning to earthquake-strengthen existing buildings?

There are a number of points that need to be considered in responding to this question:

- Many strengthening projects include the cost of making good following any strengthening and include other upgrades. These are not likely to be hampered by these provisions. These are the cases where the owner has the discretion and financial capacity to undertake this.
- Most buildings built under the current fire standards have two means of egress for fire safety or if they have a single means of egress have sprinkler installed and would be expected to be compliant.
- However, the experience of Wellington City Council is that the requirements to upgrade buildings to “as nearly as reasonably practicable” to Building Code fire and accessibility requirements can be a disincentive or barrier to some owners.
- The buildings where this is more likely to be a greater issue are older buildings that have not had any work requiring consents or particularly those where they have changed building use but without notifying or seeking approval from the local council.
- For those who are at the limits of financial capacity and who own older buildings, these requirements can provide an additional barrier which is preventing strengthening occurring which is the primary risk. In these cases the current regulatory process under the Building Act supports the demolition rather than the upgrading of buildings.
- There is a balance here from a building owners perspective as increasing accessibility may increase the utility of some buildings for tenants.

22. Should local authorities be able to grant building consents for earthquake strengthening without triggering the requirement to upgrade the building towards Building Code fire escape and disabled access and facilities requirements?

However, the Council does not support this proposal to grant building consents for earthquake strengthening without triggering the requirement to upgrade the building towards Building Code fire escape and accessibility and facilities requirements. The existing discretion under the Building Act should remain.

In some cases newer or more modern buildings do not require any further upgrade. However, there will be buildings where there hasn't been a lawful upgrade to the building for many years. In those circumstances there is a need to require a minimum level of fire safety. These minimum requirements could be better defined in any amendment to the Building Act.

That said, the matter of disabled assess and facilities is less clear cut and the minimum criteria that must be in place is not well defined. We support an industry discussion that could define the “minimum” accessibility and facilities acceptable for building types that could form a platform on which the BCA could then consider discretion on a case by case basis. This supports the Wellington City Council Accessible Wellington Action Plan 2012–2015 that has a goal of

working with the building and local government sectors to clarify aspects of the Building Act 2004 and expectations around accessibility.

23. Should any change apply to both fire escape and disabled access and facilities requirements, or to disabled access and facilities requirements only, i.e., retain the current fire escape upgrade requirements?

Both requirements need to be considered. Wellington City Council has a policy that considers accessibility under the *Accessible Wellington Action Plan 2012–2015 - Promoting inclusion* and which the Council needs to be taken into account in addressing this issue. Nationally the New Zealand Disability Strategy agreed by government includes a range of objectives which have a bearing on this issue and need to be considered by MBIE in this area.

Accessibility groups have recently advocated that not considering the needs of people with disabilities in the built environment is a breach of their human rights

There are significant costs in fire protection addressing life safety issues and accessibility is not defined and monitored in the same way as Fire Service compliance. As noted above we welcome the opportunity to contribute to a discussion that would achieve this minimum standard,

Clear guidance for any decisions in this area would be required from MBIE.

24. What would be the costs and other implications of de-linking earthquake strengthening from current Building Code fire and disabled access requirements?

Anecdotally we believe this would lead to cost reductions in some buildings, but more detailed analysis is required to quantify this. In all cases owners need to 'make good' following strengthening of a building, which means that it is a sunk cost regardless of fire or access and facilities.

We would note that any decoupling cannot be used as a way of avoiding justifiable building issues. If this was a blanket provision for all earthquake strengthening projects, then owners of buildings that are not earthquake prone (>33%) could use this to avoid wider upgrade requirements under the guise of strengthening a building.

We would be willing to work with the Ministry to assist it develop guidance material for council officers and building owners so that they can understand the implications of any discretion in this area.

We expect that advocacy groups will have strong views in this area as it could be seen to be trading their rights off against earthquake strengthening objectives. The ongoing cost to the country of potentially limiting access to buildings needs to be taken into consideration.

Heritage buildings

25. When considering listing heritage buildings on district plans, what factors should local authorities consider when balancing heritage values with safety concerns?

The community places a high value on Wellington's historic heritage and the Council has committed to assisting preserve and manage these buildings. In recognition of the public value of these buildings, the Council works with buildings owners to assist them with strengthening issues, provides grants to facilitate conservation work, undertake repairs and maintenance, and/or commission specialist professional services, such as engineer's reports.

Local authorities have the ability to apply criteria in identifying their historic heritage resources, which are then listed in the district plan. Whilst most councils do not include public safety or city resilience as part of the listings criteria, such considerations can be built into the assessment process for resource consents. Wellington City's District Plan includes resource consent assessment criteria relating to structural stability, continued use of the building, adaptive reuse, reasonable and economic use, and the public interest in enhancing the heritage qualities of the City in promoting a high quality, safe urban environment.

The process for changing district plans is onerous, but they can be amended to include such matters as earthquake-prone status, location, proximity to strategic routes, and public areas, impact on surrounding buildings, types of high risk features, the significance of the building in the public eye, the complexity of building and what can be done to strengthen the building in order to mitigate risk without losing the heritage value of the building.

However, for many local authorities it is too late to have the opportunity of looking at heritage listings in this way. Most council's already have lists of buildings and objects in their district plans that are subject to provisions around the management of effects on historic heritage. In reviewing the buildings on the heritage list it is likely that councils will have to have a more robust policy for determining what should be regulated through the district plan and meet both its obligations under the RMA to protect heritage as well as achieving building integrity and city resilience outcomes.

The section 32 process under the RMA enables a council to balance all matters before recommending to councillors that regulation is required (as well as or instead of non-regulatory methods). At this point, in developing or reviewing district plan provisions around heritage, it would be appropriate to take into account a council's other functions under the Building Act and the wider regulatory environment within which district plan provisions would apply. Public safety and overall city outcomes, in this case for resilience, would be matters taken into account in this process. Elevating consideration of natural hazards into Part 2 of the RMA would also empower councils to justify a range of approaches based on balancing heritage with other considerations under the Act.

26. What assistance or guidance will be required for owners, local authorities and communities to make informed decisions on strengthening heritage buildings in their districts?

- Integrated services to building owners so that advice on all aspects of a strengthening proposal can be delivered in one forum, and facilitated on an ongoing basis. Technical and engineering guidance will be important.

- Better guidance in the RMA around defining what is “heritage” compared with a building’s character.
- More scope under the RMA to balance a Council’s role to identify and protect historic heritage with life safety, natural hazard and city resilience considerations.
- A consortia (construction/finance/owner/council) approach that brings all stakeholders together to develop a solution for the building owner.

27. What barriers deter heritage building owners from strengthening their buildings?

- A primary issue is the financial investment required compared to rental return – some heritage buildings require a higher level of investment to strengthen them compared to an unlisted building.
- The lack of certainty and the length of the process to get a decision on strengthening a heritage building.
- The structural cost and complexity, mainly due to age and the need to retain the character/ heritage details of the building as part of a strengthening scheme.
- The cost of preparing for and going through a resource consent process, although for Wellington City Council, free heritage officer advice is available and there is a fund to refund application costs to make it less of a deterrent.
- Access to and cost of additional heritage/engineering expertise and advice required.
- The development potential constraints for commercial heritage properties (e.g. less ability to add additional floor space to offset strengthening costs).

28. Do heritage rules (for example, those in district plans) deter owners from strengthening heritage buildings?

In the absence of Council officer advice, the requirement for obtaining a resource consent because of heritage rules in a district plan can present an obstacle to owners strengthening their buildings. However, it is the experience of Wellington that most heritage building owners understand that anything they do to the building is likely to require resource consent, and that it is important that the effects of any proposal on heritage values is a matter appropriate for the Council to manage through a consent process. Proposals to strengthen buildings in most cases have the support of Council’s heritage officers as such proposals assist in protecting and prolonging the life of a building that has a greater value to the City.

It is the view of this Council that carefully constructed policies and rules within district plans can in fact enhance the process of balancing effects on heritage values with the need for buildings to be strengthened. Wellington City councillors have recently resolved to have any current barriers to earthquake strengthening within the plan rules reviewed to ensure a proactive stance is being taken to strengthen, alongside other tools it is implementing to financially incentivise strengthening and provide building owners with clear and accurate information and expedient service delivery.

The advocacy role of Councils is crucial to balancing its regulatory functions. Having an emphasis on assisting building owners through the process, rather seeing it as a deterrent is crucial to the success of a resilience policy. Depending on current and future rules within district

plans across the country, the resource consent process is a way of ensuring life safety issues can be balanced appropriately with heritage values and economic considerations. This process is important from an urban form and city vitality perspective as much as from a heritage perspective.

A focus for Government could be on dovetailing Building Act changes with RMA changes that elevate natural hazard considerations to a level that is comparable to heritage values.

29. What are the costs and benefits of setting consistent rules across the country for strengthening heritage buildings?

The potential benefits of consistent rules are that uniformity in administration is achieved across the country. This could incentivise building owners to strengthen rather than demolish because there is one clear reference point for regulation. However, what these rules might look like is a major question, including how demolition fits in.

One potential consequence of this approach is there will be a gradually changing built environment of strengthened heritage buildings that have potentially reduced heritage values. For example, if strengthening is in effect a permitted activity under some kind of 'repairs and maintenance' national rule regime, the effect of this could be buildings demonstrating reduced heritage, character and visual amenity values because the most cost effective strengthening scheme has adverse effects on the heritage values of the building. However, this may be a cost that the community is prepared to bear – cultural heritage is in some part retained and we have also attained a more resilient city.

Potentially there would be a large cost to enact such provisions and there are uncertain benefits from a "one size fits all" policy as opposed to individual councils and communities working through what is right for their specific built environments.

As with the Earthquake Prone Building Policy, each Council is grappling with these issues at different scales and in different urban contexts. An overall framework could assist where it requires and enables Councils to set their own policies on how heritage buildings will be strengthened, and how each heritage building can be prioritised within that strengthening programme.

A framework such as this could take some uncertainty and variability out of the process and may reduce decision making time for councils, whilst avoiding the need to introduce specific nationwide rules.

32. Are you aware of any problems with current policy and practice around earthquake-prone buildings, other than those identified in this document?

The areas of greatest concern that are identified by the Council include;

- Inconsistent policy approaches between councils. However this is currently being mitigated by consumer demand with the public demanding higher standards of building information and building safety.
- The ability of councils to enforce standards higher than 33%.
- The enforcement of section 124 notices.

- Conflict between legislation, particularly between the RMA and the Building Act, which is problematic for councils balancing their regulatory functions under both Acts.
- In light of this, it would be good to have a clear understanding that potential changes to the RMA mooted in advice to the Government are cognisant of the changes proposed in this document and vice versa.

The Council also considers that the Government needs to look at the rapidly rising costs of earthquake insurance and the impact on owner's ability to strengthen their buildings as a result of these costs. The issue of certainty for building owners in terms of earthquake standards also need to be considered carefully. Owners must know over the short to medium term what standard they will be expected to strengthen their building.